

#82

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 23.07.2018

W.P.(C) 7523/2018

DR. MEENU

..... Petitioner

versus

UNIVERSITY OF DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Khowaja Siddiqui, Mr. Ashwini Kumar, Mr. Raghav Kakar and Mr. Arup Sinha, Advocates

For the Respondents : Mr. T. Singhdev and Ms. Puja Sarkar, Advocates for R-3
Mr. Vivekanand Mishra, Advocate for R-4, R-5 & R-6

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

CM APPL.28746/2018 & CM APPL.28747/2018 (Exemption)

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

W.P.(C) 7523/2018 & CM APPL.28745/2018 (Stay)

1. The present petition under Article 226 of the Constitution of India, essentially seeks the issuance of a mandamus to the respondent No.2/Lady Harding Medical College (hereinafter referred to as 'LHMC'), to allow the petitioner's request and transfer her from the Post-Graduate Course of M.D. (Forensic Medicine) to M.D. (Psychiatry).

2. The facts as are necessary for the adjudication of the present petition are briefly adumbrated as follows:

- (a) The petitioner was originally granted admission to M.D. (Bio-Chemistry) in University College of Medical Sciences (hereinafter referred to as 'UCMS') on 05.04.2018.
- (b) After taking admission to the said course, the petitioner was unhappy with the circumstance that the State of Haryana, where she is employed with ESI Dispensary as a Medical Officer, does not grant recognition to the said course of M.D. (Bio-Chemistry).
- (c) Aggrieved thereby, the petitioner instituted a proceeding being Writ Petition (Civil) No.4715/2018 before this Court.
- (d) On 10.05.2018, the petitioner sought leave to withdraw the said petition with liberty to initiate appropriate proceedings against the

State of Haryana, in respect of grant of 'No Objection Certificate' to her, as also assail the Policy dated 19.03.2018 issued by the State.

3. A Division Bench of the Hon'ble High Court of Punjab and Haryana at Chandigarh vide order dated 16.05.2018, permitted the petitioner to participate in the mop-up round of counseling in M.D. (Forensic Medicine) course, without conferring any equitable rights in her favour.

4. In terms of the directions contained in order dated 16.05.2018, although the petitioner, in view of her being granted admission to M.D. (Bio-Chemistry) in UCMS, as aforesaid, was disentitled for being permitted to participate for counselling for any other course of instruction; she was, however, granted admission to M.D. (Forensic Medicine) at LHMC on 30.05.2018.

5. The petitioner after having taken admission to the Post-Graduate Course of M.D. (Forensic Medicine), as above, thereafter applied for migration to M.D. (Psychiatry) on 12.06.2018, predicated on the circumstance that a seat in the latter course was available.

6. The University of Delhi, vide the impugned communication dated 18.06.2018, did not accede to the petitioner's request of transfer of subject

from M.D. (Forensic Medicine) to M.D. (Psychiatry).

7. Being aggrieved thereby, the petitioner approached the Hon'ble Supreme Court of India by preferring Writ Petition (Civil) No.751/2018, which came to be listed on 05.07.2018.

8. The petitioner, on that day, prayed for withdrawal of the said Writ Petition with liberty to approach the High Court; which was allowed by the Hon'ble Supreme Court of India, vide order dated 05.07.2018.

9. The petitioner thereafter instituted a proceeding being Writ Petition (Civil) No.7032/2018, which came to be listed before this Court on 09.07.2018.

10. On 09.07.2018, the petitioner sought leave of this Court to withdraw the said petition, with liberty to approach the High Court of Punjab and Haryana at Chandigarh, on the ground that a connected petition being Writ Petition (Civil) No.12132/2018, was pending adjudication before that Court. This Court dismissed the said petition as withdrawn, whilst reserving liberty to the petitioner to approach the High Court of Punjab and Haryana at Chandigarh.

11. A Division Bench of the High Court of Punjab and Haryana at Chandigarh has disposed of the said Writ Petition (Civil) No.12132/2018

vide order dated 11.07.2018 by observing that, since the petitioner has been admitted to the course i.e. M.D. (Forensic Medicine), the petition had been rendered infructuous.

12. In another writ petition being Writ Petition (Civil) No.17397/2018, instituted by the petitioner, assailing the impugned notification dated 18.06.2018, a learned Single Judge of High Court of Punjab and Haryana at Chandigarh, whilst disposing of the said petition opined that since the jurisdiction in relation to the subject matter lay with the Delhi High Court, the petitioner may raise her grievance there, in accordance with law, if so advised.

13. The petitioner is, therefore, before this Court for the umpteenth time, with the present writ petition.

14. Mr. Khowaja Siddiqui, learned counsel appearing on behalf of the petitioner would urge that, although the petitioner, at her request, had been previously granted admission to M.D. (Bio-Chemistry) and M.D. (Forensic Medicine); she is however, unable to cope with the said discipline and consequently her request for transfer to M.D. (Psychiatry) be acceded to, since a seat is now available in that subject in LHMC.

15. Mr. Siddiqui, would candidly state that, although the course of M.D.

(Forensic Medicine) is accorded due recognition by the State of Haryana, owing to her inability to cope with that subject, the petitioner is seeking transfer.

16. Mr. T. Singhdev, learned counsel appearing on behalf of respondent No.3/Medical Council of India states that, the petitioner having been granted admission to M.D. (Bio-Chemistry), was not entitled under the Medical Council of India Post-Graduate Medical Education Regulations, 2000 (hereinafter referred to as the 'said Regulations') to be considered for counselling to any other Post-Graduate Course. However, the official respondents, in terms of and in deference to the directions of the Division Bench of the High Court of Punjab and Haryana at Chandigarh, permitted her to participate in the mop-up round, and allotted the seat of M.D. (Forensic Medicine) to her at LHMC, on the basis of the option exercised by her.

17. Mr. Singhdev, learned counsel for respondent No.3/MCI in this behalf relies upon the ratios of the following decisions:-

- (i) ***U.P. Unaided Medical Colleges Welfare Association (Regd.) vs. Union of India & Ors.*** in W.P.(C) 556/2018, decided by the Hon'ble Supreme Court of India on 25.05.2018;
- (ii) ***Mridul Dhar vs. Union of India***, reported as (2005) 2 SCC 65;
- (iii) ***Ashish Ranjan vs. UOI***, reported as (2016) 11 SCC 225;
- (iv) ***Dr. Rohan Kapoor & Ors. vs. Guru Gobind Singh***

Indraprastha University & Anr. in W.P.(C) 5971/2018, decided by a learned Single Judge of this Court vide order dated 30.05.2018;

(v) **Sneha Yadav vs. Guru Gobind Singh Indraprastha University & Anr.**, in W.P.(C) 6565/2018, decided by this Court vide order dated 08.06.2018;

(vi) **Dr. Arun Kumar vs. Guru Gobind Singh Indraprastha University and Ors.**, in W.P.(C) 6999/2018, decided by this Court vide order dated 17.07.2018.

18. Mr. Singhdev, learned counsel would further urge that the sanctity of the cut-off date for counselling and admission is beyond the pale of challenge. In other words, no admission can be granted to the Post-Graduate Medical seats under any quota beyond 31.05.2018, the date postulated in the notification issued by the respondent No.3/Medical Council of India on 20.02.2018, in relation to the Post-Graduate Medical seats.

19. Mr. Singhdev, learned counsel would lastly urge that, the said Regulations bar migration/transfer of a student undergoing any Post-Graduate Degree/Diploma/Super-Specialty course, belatedly. The attention of this Court is invited to the proviso to Regulation 10 the said Regulations in this behalf, which is extracted hereinbelow:-

“10...

MIGRATION

Under no circumstance, Migration/transfer of student undergoing any Post Graduate Degree/Diploma/ Super Specialty course shall be permitted by any University/ Authority.”

(Emphasis Supplied)

20. Having heard learned counsel appearing on behalf of the parties and perused the relevant record, in my considered opinion, the relief prayed for in the present petition cannot be granted. The cut-off date of 31.05.2018, stipulated in the subject notification, issued by the respondent No.3/Medical Council of India, as well as, a plain reading of the decisions referred to hereinabove, leave no manner of doubt that, the cut-off date for counselling and admission is sacrosanct and cannot be deviated from under any circumstance. Furthermore, transfer/migration, as prayed for by the petitioner, is prohibited by the extant Regulations, the validity of which has not been assailed in the present proceedings.

21. For the foregoing reasons, the present writ petition being devoid of any merit is accordingly dismissed. The pending application also stands disposed of.

**SIDDHARTH MRIDUL
(JUDGE)**

JULY 23, 2018

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